

# **VEHICULAR MANSLAUGHTER CASE TABLED ON DEPUTY DA'S TABLE**

## **Synopsis**

On the evening of September 7, 2002, the Grover Beach Police Department responded to the report of an accident involving a vehicle and two pedestrians crossing Grand Avenue at Fifth Street. This accident caused one pedestrian fatality. The police investigated and sent their report to the San Luis Obispo County District Attorney's Office. The District Attorney's Office did not file any charges against the driver or reject the case, and, after six months, sent the case to the Attorney General's Office for its review. The Attorney General also declined to file charges and returned the case to the District Attorney's Office on August 26, 2003. Later, two deputies from the Attorney General's Office came to our Grand Jury office to present their reasons for declining to file charges against the driver.

This Grand Jury report examines the handling of the case by the Grover Beach Police Department and the San Luis Obispo County District Attorney. Key issues include: 1) the time taken to process the case in the District Attorney's Office, 2) why it was transferred to the California State Attorney General's Office, 3) the time the case was held at the Attorney General's Office, and 4) why and how the District Attorney finally filed the charge after the Attorney General's rejection. California law requires the prosecuting attorney to file charges in a misdemeanor manslaughter case within one year of the victim's death; otherwise, the statute of limitation prevents filing and prosecution. The Grand Jury, knowing of the approaching statute of limitation deadline, made this investigation a top priority. It was not until September 5, 2003 that the District Attorney filed one charge of misdemeanor manslaughter.

## **Why the Grand Jury Investigated**

In August 2003, the parents of the fatally injured girl petitioned the Grand Jury to explore why the District Attorney's Office did not act. The family had been frustrated in their attempts to receive information about the status of the case, and later, by the Attorney General's decision not to file. The concerned family and others submitted 704 complaints to the Grand Jury requesting an investigation, the first arriving on August 14, 2003. The family sought to motivate action because the impending September 11, 2003 expiration of the statute of limitation would prevent any subsequent criminal prosecution.

## **Authority**

The Grand Jury exercises its authority to investigate the San Luis Obispo County District Attorney under Penal Code 925, which states "The grand jury shall investigate and report on the operations, accounts, and records of the officers, departments or functions of the county" and for the Grover Beach Police Department under Penal Code 925a, which authorizes the investigation of city departments. The last two parts of this report are informational only, and are included to help the reader make the bridge between the case leaving, then returning to the county.

## **Background**

A traffic accident occurred in Grover Beach that resulted in the death of a 17-year-old girl. Typically, in a case of a traffic accident resulting in a fatality, the law enforcement agency of the local jurisdiction where the accident occurred conducts a comprehensive investigation of the accident scene, the vehicle, and any persons who were involved or witnessed the event. After assessing the information compiled, the local agency then forwards its report, along with any recommended charges, to the County District Attorney's (DA) Office for review of the file, any necessary additional investigation, and a decision whether or not to file charges against any participants. If the DA's Office feels that charges are appropriate and a reasonable chance exists to sustain the charges, the DA will file the determined charges with the appropriate court of law.

The DA is elected by the voters of the county to a four-year term to lead the county's prosecuting agency. Due to the volume of misdemeanor and felony cases forwarded to the DA's Office by local law enforcement agencies each year, the DA employs a staff of deputy DAs to assist with review and prosecution of cases. Among these are a chief deputy who serves to oversee the deputies; a filing deputy responsible for case review and filing of the less serious, or misdemeanor cases; and a filing deputy for the more serious felony cases. The filing deputies must make the decision whether or not to file charges before the statute of limitation expires. Once it expires, the opportunity to prosecute ends, regardless of the merit of the charges or the ability to successfully prosecute the case. When the filing of a case involving injury or death occurs, the Victim Witness (VW) Division of the DA's Office is notified. VW then assigns a staff advocate to provide assistance and support to the victim and/or family throughout the process of prosecution.

When a valid or perceived conflict of interest exists, the DA's Office may request a review by the Attorney General's (AG) Office. The AG's Office also employs a staff of deputies and assistants to handle the review and prosecution of cases. If, in the opinion of the AG's staff attorneys, sufficient grounds exist to file charges and a reasonable chance for prosecution exists, the AG's Office will file charges in an appropriate court. Generally, if the AG's Office determines that grounds are insufficient, the case is closed and the matter ends.

## **Method of Investigation**

The Grand Jury requested, in some cases subpoenaed, copies of the police file, the driver's previous driving history, his court and probation records, and his insurance claim pertaining to this accident. Some of the documents gathered for the investigation include the District Attorney's *Protocol Addressing Conflict of Interest and Case Management* and *Complaint Filing Procedures*. In addition we obtained Victim Witness notes, various correspondence, attendance sheets, and workload records for the Misdemeanor Filing Deputy District Attorney (Filing Deputy). The Jury also examined minutes of the Pension Trust Fund meetings for the past five years, Pension Trust Fund travel and expense vouchers for that Filing Deputy and the Tax Collector who is the father of the driver involved in the accident. We then reviewed the above materials, which precipitated our need to question individuals on several matters.

The jury conducted interviews with police officers from the Grover Beach and Pismo Beach departments who responded to the accident. We interviewed many District Attorney personnel to learn what actually transpired in the District Attorney's Office after the police report was submitted. We questioned the intake secretary, the Filing Deputy, the Chief Deputy District Attorney, three other deputy district attorneys, the information technology lead programmer, and three victim witness advocates including the Victim Witness Director who had talked with the family. In all interviews conducted, the GJ placed the witnesses under oath and admonished them not to discuss the proceedings with anyone else. At least nine jurors were present at each interview, and the proceedings were tape recorded for later reference and review by the jurors who were not able to attend. Some of these interviews were transcribed by one of the jurors for clarification of the facts.

Members of the Grand Jury visited the location of the accident at night, observed the scene, the lighting, and even crossed the street using the same crosswalk. Later, two deputies from the Attorney General's Office came to our Grand Jury Office to present their reasons for declining to file charges against the driver.

We developed this report for the public after reviewing the information extracted from a myriad of sources. We have organized the data chronologically within each section as much as possible. The investigative Parts 1 and 2 detail the events by numerical order. The informational sections, Parts 3 and 4, use the narrative form. Acronyms will be used throughout the report for convenience. The following table of acronyms will help the reader.

#### **Acronyms Used**

<b>AG</b>	<b>California Attorney General</b>
<b>AGH</b>	<b>Arroyo Grande Hospital</b>
<b>DA</b>	<b>San Luis Co. District Attorney</b>
<b>GB</b>	<b>Grover Beach</b>
<b>GBPD</b>	<b>Grover Beach Police Dept</b>
<b>GJ</b>	<b>San Luis Co. Grand Jury</b>
<b>MAIT</b>	<b>Calif. Highway Patrol's Multidisciplinary Accident Investigation Team</b>
<b>PB</b>	<b>Pismo Beach</b>
<b>SLO</b>	<b>San Luis Obispo</b>
<b>VW</b>	<b>Victim Witness</b>

**Part One:** Grover Beach Police Department (GBPD)'s accident investigation

**Part Two:** San Luis Obispo County District Attorney (DA)'s Office processing and Victim Witness (VW) handling of the case

- A) Communication within DA staff and filing conflicts: What went on in the DA's Office?
- B) Case remains in the DA's Office for six months without a decision to file or reject: How could "shelving" of the file go unnoticed for six months?
- C) Victim Witness involvement: How could the VW Office better assist the family?

**Part Three:** Transfer of the case to the California Attorney General (AG) Office

**Part Four:** The District Attorney reclaims the case. AG Office relinquishes the case to the SLO DA Office and DA files the charge of vehicular manslaughter without gross negligence.

## **PART ONE**

### **Grover Beach Police Department Investigates**

#### **Facts:**

- (1) Two teenage female pedestrians were crossing Grand Avenue northbound at 5th Street in Grover Beach at 9:04 p.m. on Saturday, September 7, 2002.
- (2) A 1997 Chevrolet Tahoe was traveling west on Grand Avenue at the same time.
- (3) The vehicle struck the pedestrians, causing serious injuries that resulted in the subsequent death of one girl and minor injury to the other.
- (4) GBPD responded to the emergency call.

#### **Findings:**

- (1) The GB police officer on patrol at the time arrived within two minutes of the accident.
- (2) The San Luis Obispo Ambulance Service was requested at 9:06 p.m., arriving at 9:10, to provide medical attention and to transport the seriously injured victim to Arroyo Grande Hospital (AGH). A second ambulance, summoned at 9:12 p.m., arrived at 9:17, took the other victim to AGH where she was treated and released.
- (3) The GB responding officer interviewed and took statements from five witnesses at the site of the accident.
- (4) The GB officer interviewed the driver and administered a preliminary alcohol breath test, then released him.
- (5) When another GB police officer came on duty, that officer went to the driver's home, and at 10:11 p.m., took him to AGH to obtain a blood sample.
- (6) Neither the first-responding GB police officer, nor his watch commander on duty at the time of the accident, had the training required to issue a citation at the scene of the accident unless he had witnessed the accident.
- (7) A Pismo Beach police officer with advanced traffic accident training arrived at 9:57 p.m. and assisted with the investigation, as requested by GB police.
- (8) The GB police officer's report did not indicate any adverse weather or lighting conditions as contributing causes of the accident.
- (9) The police report showed no tire skid marks on the pavement.

- (10) The GBPD impounded the vehicle and arranged for a full inspection.
- (11) The GB officer and a police volunteer took photos that night, and later, during the accident reconstruction.
- (12) On September 10, 2002, the GBPD requested that California Highway Patrol Multidisciplinary Accident Investigation Team (MAIT) inspect the vehicle. MAIT inspected the vehicle on September 12, 2002.
- (13) MAIT's vehicle inspection ruled out malfunction as a cause of the accident.
- (14) September 11, 2002, four days after the accident, the seriously injured victim died from the injuries she had sustained.
- (15) On September 24, 2002, the GBPD submitted a complete report in triplicate - including accident details, photos, medical reports, and witness statements - to the SLO County DA Office.
- (16) The GB police accident report recommended that the DA review the report for possible prosecution of the driver for violation of *Penal Code Section 192(C)*, vehicular manslaughter without gross negligence, and *Vehicle Code Section 21950(a)*, pedestrian right of way at a crosswalk.
- (17) After submitting its report to the DA's Office, GBPD considered its task complete. Per the department's standard operating procedure, police personnel did not make any further inquiries about the case or the possible prosecution of the driver.

### **Conclusions:**

- (1) The GBPD conducted a thorough investigation of the accident.
- (2) Accident reconstruction efforts followed guidelines detailed in the *Collision Investigation Manual*.
- (3) Weather, lighting, and vehicular malfunction were ruled out as causative factors.
- (4) GBPD insured that the appropriate medical reports were included in the investigation package before delivery to the DA.
- (5) The initial responding officers were unable to write a citation at the scene because they lacked the requisite training.
- (6) GBPD processed the case efficiently and effectively.
- (7) GBPD's delivery of the complete report to the DA's office was timely.

**Recommendations:**

- (1) The GBPD should make every reasonable effort to train additional field personnel so that citations may be written at the scene, when appropriate.
- (2) In future cases involving death or serious injury, the GBPD should routinely follow up and inquire of the DA as to the status of the case.

**GBPD Response Requirement**

Under Penal Code Section 933(c), the governing body of the GBPD shall comment to the presiding judge on these findings and recommendations no later than 90 days from this report's publication.

## **PART TWO**

### **District Attorney's Office Processing and Victim Witness Handling of the Case**

**A. What went on in the District Attorney's Office?****Facts:**

- (1) The DA's receptionist received the file from the GBPD on September 24, 2002 and date-stamped it.
- (2) The Intake Secretary personally delivered the large file to the Deputy DA responsible for misdemeanor filings after numbering and processing the file.
- (3) No system was in place at that time for tracking misdemeanor cases.
- (4) The file remained in the Filing Deputy's office from late September 2002 until March 26, 2003.
- (5) The Filing Deputy did not contact GB or PB police officers about their accident investigation, or call upon the DA investigators to conduct additional investigation.
- (6) The Filing Deputy stated to the GJ that he did not discuss with his colleagues his problem with filing.
- (7) The District Attorney received a letter from the victim's mother on March 18, 2003, questioning the delay in filing charges.
- (8) On March 26, 2003, the Chief Deputy DA told the filing deputy to file the case.

- (9) The Filing Deputy said he could not file the case because he could not find a violation of the vehicle code.
- (10) This same Filing Deputy filed serious criminal charges against this same driver in 1999 which resulted in a conviction.
- (11) The Filing Deputy told the GJ that in reviewing the file in March 2003, he discovered that the driver is the son of the County Tax Collector whom he knows. The Filing Deputy serves with the County Tax Collector on the County Pension Trust Fund board, which poses a possible appearance of conflict of interest.
- (12) Upon learning that the County Tax Collector is the driver's father, the Chief Deputy took the file for transfer to the AG's Office on March 26, 2003 to avoid any perception of conflict of interest.

**Findings:**

- (1) The Filing Deputy had opportunity to examine the file in late September 2002.
- (2) The file remained in the Filing Deputy's office for six months without the knowledge of senior DA personnel due, in part, to the lack of a tracking system.
- (3) The Filing Deputy did not act on the case, to either file or decline to file, during the six months the case remained on his desk.
- (4) He did not seek advice of the Chief Deputy DA or the DA after he read the file.
- (5) He did not discuss with other DAs, before March 26, 2003, any perceived problem about filing.
- (6) Each time the victim's mother requested to speak to him he declined. He chose to communicate through the victim's family's attorney.
- (7) The Chief Deputy, on March 26, 2003, directed the Filing Deputy by saying, "You need to file this case." It was then that the Filing Deputy said he first noticed a document from the tax collector's office bearing the name of the driver's father.
- (8) The Chief Deputy, acting on this possible conflict, contacted the AG Office in Los Angeles, asking that office to review the file.
- (9) The Senior Assistant AG stated that the case did not meet the usual parameters of conflict, but would take it as a courtesy.
- (10) GJ investigation of Pension Trust Fund minutes of January 26, 1998 through July 28, 2003, travel vouchers, conference expenses, and Auditor/Controller records of the past five years did not expose any connections that suggested a conflict



between the Filing Deputy and the County Tax Collector, despite their serving on that same committee.

### **Conclusions:**

- (1) The Filing Deputy did not act to perform his duty to file or reject this case.
- (2) The Filing Deputy withdrew from any of the alternative actions available to him.
- (3) The Filing Deputy, when questioned by the Grand Jury, had no acceptable explanation for his inaction.
- (4) The lack of a tracking system for misdemeanors allowed this case to go unresolved and unnoticed for six months.
- (5) The Chief Deputy DA accepted the perception of a conflict of interest and referred the case to the AG.
- (6) The District Attorney's Office did not file or reject the case in March 2003, causing additional extended stress to the victim's family.
- (7) Because of this case, in April 2003, the Chief Deputy DA requested two new systems of tracking. One was to track the more serious high misdemeanor (red dot) pending cases; the more recent one, for pending cases neither filed nor rejected.
- (8) This case fueled the formulation of a new procedure (still in draft in the DA's Office) titled *Filing Procedures for Vehicular Manslaughter Cases (and Other Cases Involving a Fatality)*.
- (9) The Grand Jury found nothing to indicate to us that a conflict of interest existed with the DA handling the case, in the interviews we conducted or the records we reviewed.
- (10) The Grand Jury's initial observation was that the Filing Deputy's performance in the handling of this case should be sanctioned. However, a closer examination revealed that management personnel either knew, or should have known, that a review of this fatal accident was pending. News articles, for example, were printed at the time of the accident in local newspapers in which the driver was named. News articles in December 2002 identified the driver as the son of the County Tax Collector.

### **Recommendations:**

- (1) The DA's Office should track all cases, starting from the time a file comes to the office, rather than when the deputy files it. [The new *Pending Cases (Neither Filed or Rejected)* does this tracking now.]

- (2) Encourage Deputy DAs to seek input of each other and of their superiors regarding problematic and difficult cases.
- (3) The Grand Jury recognizes that this is a small county and therefore many people in county government know each other. This makes it even more imperative that the DA's Office identifies conflicts early on in their handling of criminal cases.
- (4) The DA's Office should substantiate claims of conflict of interest more carefully before referring cases elsewhere.

**B. How could "shelving" of the file in the DA's Office go unnoticed for six months?**

**Facts:**

- (1) No computer program existed for tracking misdemeanors.
- (2) At that time, no system of "red flagging" existed for misdemeanors before filing a case.
- (3) The Filing Deputy did not act or say anything to his colleagues about this case.
- (4) Management in the DA's office was not aware of the inaction.

**Findings:**

- (1) Only felony cases were trackable at the time.
- (2) Communication within the DA's Office regarding this file was insufficient.

**Conclusions:**

- (1) Tracking systems for misdemeanors could have prevented the lengthy "shelving" of the file.
- (2) The Filing Deputy failed to make a timely decision to file or reject.

**Recommendations:**

- (1) The Chief Deputy should periodically evaluate the computer programs designed and implemented for tracking high misdemeanor (red dot) cases and the new pending cases, now that such tracking is available.

- (2) The Chief Deputy DA should exercise closer control/oversight of deputies' caseloads to monitor status of cases.
- (3) Management should take a more assertive role in supervising employees of the DA's Office and take corrective action when needed.

**C. How could the Victim Witness Office better assist the family?**

**Facts:**

- (1) The case was delivered to the DA's Victim Witness (VW) Division Assistant Director's desk, but no action was initiated because a filing had not occurred yet.
- (2) No procedure was in place to require a contact with victims' families until after a filing occurred.
- (3) The victim's mother made the first contact with VW Assistant Director on December 23, 2002, asking to see the Filing Deputy.
- (4) The victim's mother requested the help of VW on seven occasions. She had questions about the lack of progress of the case.
- (5) Subsequent communication between the victim's mother was with another VW advocate. The Assistant Director assigned this advocate to the case on February 6, 2003.
- (6) VW made no other attempts to satisfy the request of the victim's mother when the filing deputy declined to talk with her.
- (7) The VW advocate and Assistant Director did not communicate with the Director of the VW Office concerning victim's parents' inquiries.
- (8) The first contact *initiated* by VW to advocate on behalf of the victim's family was on March 10, 2003. [The accident was in September 2002.]
- (9) The Filing Deputy advised the VW advocate on March 10, 2003, that he was inclined not to file the case.
- (10) The Director of VW stated that she did not know of the police report until March 31, 2003.
- (11) The Director of VW and Chief Deputy DA met with the victim's mother on April 10, 2003, to inform her that the DA had referred the case to the AG's Office.
- (12) The Director of VW spoke with the DA on July 24, 2003, after victim's mother requested the DA re-review the case.

**Findings:**

- (1) At the time of the accident, Victim Witness lacked policy for discussing with victims' family where death is involved. [New policy addresses this.]
- (2) Communication within the VW Office was insufficient in this case.
- (3) The VW Assistant Director realized the father-son relationship of the County Tax Collector and the driver upon his review of the file.
- (4) The victim's family did not receive support and VW advocacy until the case went to the AG's Office.

**Conclusions:**

- (1) Lack of communication within the VW Division hindered effectiveness of service to this victim's family.
- (2) VW did not reach out to the family until after filing of the case, almost seven months later.
- (3) The VW advocate was not helpful in addressing this victim's parents' anxieties when they repeatedly requested status reports.
- (4) Lack of initiative and responsiveness reflects negatively on staff and division.
- (5) Policy and procedures failed to address this case while the Filing Deputy remained undecided.
- (6) The policy in existence at the time and the lack of a tracking system prevented timely assistance to victim's family.

**Recommendations:**

- (1) The director should schedule regular VW Division meetings for discussion of current cases among all advocates.
- (2) The division should develop guidelines to offer appropriate assistance to families of victims while waiting for the DA's decision to file or reject. [New procedure has been drafted and instituted as of December 11, 2003 as a result of this case.]
- (3) Assistant directors should monitor DA intake data to assess need for VW intervention. [Also part of new procedure.]
- (4) VW advocates should promptly notify the Chief Deputy DA when filing deputies are not responding in a timely manner to victim's requests.

## **DA and VW Response Requirement**

Penal Code Section 933(c) mandates that the DA shall comment within 90 days to the presiding judge on the findings and recommendations in this report directed to the DA Office and the Victim Witness Division.

### **PART THREE**

#### **Transfer of the Case to the California Attorney General (AG) Office**

The DA's office sent the case to the Los Angeles office of the California Attorney General on March 26, 2003, with a letter advising that

1) "... a conflict of interest exists which would preclude the prosecution of the above-entitled matter by our office," 2) the "...case does not fit the strict traditional definition of a conflict of interest, but better judgment would indicate that an impartial review and prosecution of the case would be in the public interest due to the complex net of interactions that the father of the defendant has with members of our office," and 3) "We would appreciate it if your office would be kind enough to handle this matter to avoid any appearance of impropriety in the handling of this case by our office."

The DA 's Office sent the file, containing only material related to this incident, to the AG after the AG agreed to take the case. The AG's staff conducted their investigation, holding the case four months before determining that there were not sufficient grounds to file charges against the driver. We have incorporated in this summary the AG representatives' explanation to the GJ of some of their investigative process.

On July 21, 2003 the AG met with the victim's family in SLO to apprise them of their decision to reject the case. Later that week the girl's mother called VW to request the DA re-review the case. Meanwhile the AG sent a letter to inform the DA of the decision. On August 19, 2003 the family and others came to meet with the DA and express their anger and frustration at the long delay of the filing decision. They also communicated their dissatisfaction with their lack of access to the Filing Deputy. The GJ received these same complaints in August.

On September 3, 2003, two AG representatives came to the SLO County GJ Office. They stated this was a highly unusual action. They explained their decision to us and described what they did in reviewing the case. The AG does not consider the character, behavior, or prior infractions of a suspect unless it is relevant, or proves some fact, or is evidence that is usable to support a charge.

They stated that they had reviewed the case in light of practices typically applied to cases reviewed in the Los Angeles urban area, where the number of such cases is greater. They file only the most provable cases with aggravated circumstances. They said that they did not consider the possibility of successful prosecution in a less populous county, despite the fact that workload considerations vary greatly between the two jurisdictions. On May 4, 2003 a Deputy AG personally visited the site of the incident and interviewed the GB Police officer who responded to the 911 call.

The AG staff considered whether sufficient evidence existed for filing charges against the driver. They cited these factors in making their decision:

- 1) the street lighting at the intersection
- 2) the dark clothing worn by the victims
- 3) conflicting evidence that both girls were within the crosswalk at the time the vehicle struck the girls
- 4) that the driver's speed was assumed to be within the posted speed limit, and
- 5) no evidence that the driver had consumed alcohol.

They examined the cell phone records of the driver for calls made on the evening of the incident and determined that he was not talking on his cell phone at the time that his vehicle struck the two girls. They believed that the two victims might have been outside the crosswalk at the time the vehicle struck the girls.

Because of the focused involvement of the GJ, the AG investigator returned to SLO to re-examine evidence during the week of August 25-29. They nevertheless concluded that, in their opinion, the driver could not have avoided striking the victims. Listening to the AG's report, the GJ realized that the case file submitted to the AG by the DA's Office did not include the long list of the driver's prior driving citations and prior road rage convictions nor had they seen the accident photos.

At the conclusion of the AG's presentation, the GJ's position was that the AG's Office should reconsider its decision. The GJ asked the AG to review additional materials and provided them with accident photos and documents. The jury had compiled this supplemental information in its investigation of the matter. When the GJ apprised the AG representatives of these prior convictions, the AG staff responded that they could not use much of the driver's prior traffic record because that information would not be admissible as evidence. The AGs agreed to take the box of materials from the GJ back to Los Angeles with them. The additional items, however, did not change the AG's opinion, and they so informed the GJ the next day.

The AG notified the victim's mother again on September 4, 2003 that they were not prosecuting the case, but that the DA had the option of reclaiming the case. The victim's mother immediately called VW urging the DA to resume control and file charges against the driver.

## **PART FOUR**

### **The District Attorney Reclaims the Case**

The Senior Assistant Attorney General informed the Chief Deputy DA in a letter dated July 23, 2003 that the AG staff's review of the case was completed and that the AG's Office decided not to file any criminal charges against the driver. The letter arrived to the desk of the Chief Deputy DA while he was out of the office on leave. Apparently no one was assigned to process his mail in his absence. He returned to work August 11 and immediately showed the letter to the DA. The Chief Deputy asked the AG to return the case paperwork to the SLO DA's Office.

Meanwhile, after learning of the AG's original negative decision, the GJ wrote to the AG's Office on August 15, 2003, just after receiving the family's complaints. The GJ wanted an explanation of the factors contributing to the AG's decision. The GJ advised the AG of the extensive local news coverage generated by the case and the hundreds of complaints the GJ had received. The AG decided to present an explanation to the GJ in person, something rarely done by that office.

On September 3, 2003 two representatives of the Los Angeles division of the AG's Office met with the GJ at the GJ office in San Luis Obispo to explain their decision of July 23. As explained in Part 3 of this report, the GJ disagreed with the AG Office's decision and provided the AG representatives with additional information the GJ had compiled, including photos of the accident scene and information about prior offenses and convictions of the driver. However, that additional information apparently did not change the AG Office's decision not to file charges. The day following that visit to the SLO GJ, the AG indicated their opinion had not changed despite the input from the GJ.

On September 4, 2003 the attorney for the victim's family sent a letter to the Chief Deputy DA stating that "It is our hope that... your office will now file the misdemeanor complaint against ... and pursue prosecution in this matter."

On September 5, 2003 the Senior Assistant Attorney General sent a letter to the District Attorney forwarding more than 300 pages of material, including "...material you have not previously seen or requested." She also referred information to the DA relating to a Department of Motor Vehicles administrative hearing decision to return the driver's license and some information regarding the cell phone previously installed in the vehicle. None of that information proved to be relevant to this investigation.

The AG indicated that the DA's Office was free to file if they chose to do so. That same day, September 5, 2003, the DA assigned the case to another Filing Deputy with the instruction to research and review the case and to recommend whether or not to file any charges. (Remember that on March 26 the Chief Deputy had instructed the filing deputy to "file the case.") Later that same day the DA's Office filed one count of misdemeanor vehicular manslaughter against the driver.

**Case Status:**

The DA's Office filed charges on September 5, 2003 in the San Luis Obispo County Superior Court and counsel for defense immediately proceeded to file a series of motions. In January 2004 a defense motion to recuse the DA's Office from the case and effectively end the prosecution failed in superior court. Defense counsel had requested an April 2, 2004 hearing regarding his motion involving the prosecution's failure to preserve the victim's blood sample. Arroyo Grande Hospital did not keep the victim's blood drawn on the evening of the accident. The defense position is that the blood sample is potentially significant in the case because a preliminary screening by hospital staff had shown the presence of methamphetamine in the victim. The defense attorney, however, had a conflict on April 2, and the motion was continued to April 16. A ruling on all motions is necessary before the trial scheduling date of May 28. The SLO DA is ready to proceed with the trial, which has been set for June 22.